

## **REMARKS**

### **I. Introductory Comments**

Claims 1-85 were filed in the original application. In the Communication of September 28, 2006, the Examiner required an election under 35 U.S.C. §121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable. Applicants replied to the election on October 19, 2006.

In the Office Action under reply, the Examiner has withdrawn from consideration claims 1-27, 31-37, 45, 50, 51 and 55-58, and has rejected the claims as follows: under 35 U.S.C. §102(b) as allegedly being anticipated by Harris et al. (U.S. Patent No. 5,672,662) (claims 28-30, 38-44, 46-49 and 52-54).

### **II. Status of the Claims**

Claims 1-85 were previously pending. The Examiner has withdrawn from further consideration claims 1-27, 31-37, 45, 50, 51 and 55-85. Thus, claims 28-30, 38-44, 46-49 and 52-54 remain under consideration.

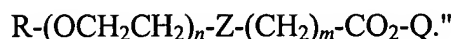
Claims 28 and 52 have been amended to omit "comprising-type" language and substitute therefor the terms --having-- or --has-- so as to better reflect the transition claim language conventionally employed in the chemical structure context. No new matter is introduced by way of these changes.

### **III. The Rejection Under 35 U.S.C. §102(b)**

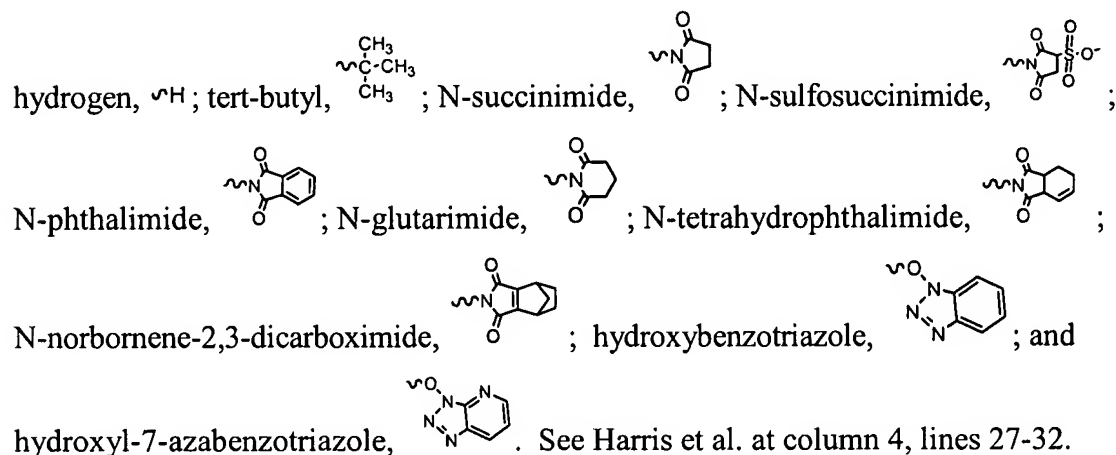
The Examiner has rejected claims 28-30, 38-44, 46-49 and 52-54 under 35 U.S.C. §102(b) as allegedly being anticipated by Harris et al. (U.S. Patent No. 5,672,662). Ostensibly, the Examiner has taken the position that each and every element of rejected claims is disclosed by Harris et al.

The standard for anticipation is rigorous requiring that every element of the claimed invention be disclosed by a single prior art reference. *See Minnesota Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed.Cir.1992); *Scripps*, 927 F.2d at 1576-77; *Lindemann Maschinenfabrik GMBH, v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed.Cir.1984).

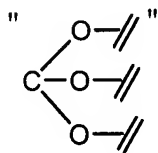
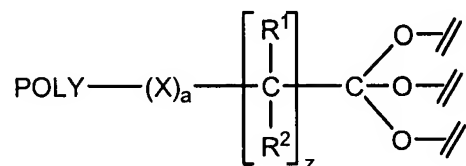
Harris et al. at column 4, lines 18-20, teaches "active esters of poly(ethylene glycol) ... can be represented as follows:



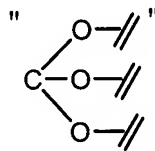
As would be understood by those of ordinary skill in the art, the "-CO<sub>2</sub>-Q" is the moiety that provides the "active ester" aspect of Harris et al.'s disclosed structures. Possible definitions of the functional group "Q" (as well as proposed chemical formulae) include:



Turning the claimed invention, independent claim 28 is directed to ortho ester moiety-containing polymers of the following structure:



The feature of a moiety is required not only by rejected independent claim 28, but by rejected dependent claims 28-30, 38-44, 46-49 and 52-54 as well. In contrast, Harris et al.



does not disclose polymers having the feature of a moiety.

Thus, it is clear that Harris et al. does not teach each and every element of the claimed subject matter. As a consequence, reconsideration and removal of the rejection under 35 U.S.C. 102(a) for at least the reason provided above are respectfully requested.

#### IV. Conclusion

In view of the foregoing, Applicants submit that the pending claims satisfy the requirements of patentability and are therefore in condition for allowance. Reconsideration and withdrawal of all objections and rejections are respectfully requested and a prompt mailing of a Notice of Allowance is earnestly solicited.

If a telephone conference would expedite the prosecution of the subject application, the Examiner is requested to call the undersigned at (650) 620-5506.

Respectfully submitted on behalf of  
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Date: April 17, 2007

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